

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE-OPELOUSAS DIVISION**

**SECURITIES AND EXCHANGE
COMMISSION**

CIVIL ACTION NO. 09-928

VERSUS

JUDGE MELANCON

ROBERT L. HOLLIER, ET AL

MAGISTRATE JUDGE HANNA

ORDER

The court previously ordered the parties to submit briefs on whether there was a statutory prohibition against the award of reasonable expenses under Rule 37 of the Federal Rules of Civil Procedure against the Securities and Exchange Commission, as argued by the government. After briefing, the government concedes “there is no statutory impediment to an award of reasonable expenses under Rule 37 as long as such an award does not include any items that constitute costs under Section 27 of the Exchange Act.”¹ The government agrees that “reasonable expenses” in Rule 37 covers costs and attorney’s fees. However, it argues it is entitled to a hearing, and an opportunity to review the reasonableness of any submitted expenses and to evaluate whether any of defendant’s requests will implicate limitations set forth in the EAJA, 28 U.S.C. § 2412(b) or Section 27 of the Exchange Act.

The undersigned finds an award of reasonable expenses under Rule 37(a)(5)(C) is

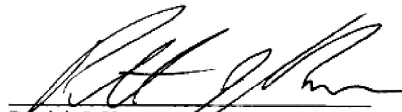
¹Plaintiff Securities and Exchange Commission’s Brief on the Propriety of Assessing Costs Under Federal Rule of Civil Procedure 37 (Rec. Doc. 79), p. 3.

warranted in this matter, however, defendant's brief in support of an award of reasonable expenses does not set forth any specific monetary amounts that the court or plaintiff may evaluate for reasonableness and/or whether same would run afoul of the Exchange Act.

Therefore,

IT IS ORDERED that within 7 days of the date of this Order, defendant shall file a specific request for reasonable expenses with appropriate documentation; plaintiff shall have 7 days after the filing to respond with any objections pursuant to Rule 37(a)(5)(C). If the court deems a hearing is required, the parties will be notified. If the parties reach an agreement on a reasonable amount of expenses, defendant is to notify the court at (337) 593-5140.

Lafayette, Louisiana, this 6th day of December, 2010.



Patrick J. Hanna
United States Magistrate Judge
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